IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4418 OF 1992

Uttam Sakharam Shinde & Ors. ..Petitioners.

Vs.

Parvati Vilas Kurhade & Ors. ..Respondents.

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Mrs.Anita A. Agarwal for the Petitioners.

Mr.Nitin Jamdar for Respondent Nos.1(h) to 1(j).

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CORAM : F.I.REBELLO &

DR.D.Y.CHANDRACHUD, JJ.

6th September, 2005.

P.C. :

1. The Petitioners are residents of Survey No.27/1 and Survey No.28/1A/1 situated near Ramwadi, Octroi Naka, Vadgaon Sheri, Taluka Haveli, District Pune. Respondents 1(a) to 1(j) are stated to claim as owners of the land which forms the subject matter of the proceedings. A notification is stated to have been issued by the Government on 10th November, 1983 declaring, an area admeasuring 4123 sq. mtrs. comprised in Survey Nos.27 and 28

as a slum area under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. An appeal challenging the notification was filed by Respondent Nos.1(a) to 1(j) before the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Tribunal. The Petitioners are stated to have applied for being impleaded before the Tribunal and it has been averred that the application for impleadment was allowed. No grievance was made on behalf of the owners that they were not given an opportunity of being heard, before a declaration of the area as a slum came to be issued by the Government. Before the Tribunal, the owners, however, submitted that they were ready and willing to develop the property. The Tribunal by its order dated 23rd July, 1992 permitted the owners to develop the land to the extent of their shares and to provide alternative accommodation to the occupiers.

2. On behalf of the Petitioners, it was urged that at the material time when the order of the Tribunal was passed, once a declaration was made under Section 4, the Tribunal had no jurisdiction to pass the order which it passed in the instant

case. In appeal against the issuance of a notification, the Tribunal was required to go into the legality of the notification in the appeal filed by the owners and if the notification was in accordance with law, the scope of the enquiry was at an end and the Tribunal had no jurisdiction to issue the directions which were issued in the impugned order.

3. At the hearing of the Petition, learned counsel appearing on behalf of the Respondent owners was unable to sustain the directions which were issued by the Tribunal in its impugned order dated 23rd July, 1992. However, the Petition was adjourned on 6th June, 2005 and again on 13th June, 2005 to enable the parties to explore if any settlement was possible. Counsel have since informed the Court that it has not been possible to resolve the dispute. Counsel appearing for the Petitioners stated that the Petitioners are only some of the occupants and even amongst them, there is no unanimity of views.

4. We find merit in the contention of the Petitioners. On 23rd July, 1992 when the impugned

order was passed, at any rate, the Tribunal was not vested with the jurisdiction to issue the directions which have been issued by the impugned order. The Tribunal in the present case was hearing an appeal under Section 4(3) of the Act against the declaration of a slum area. Hence, the jurisdiction of the Tribunal extended to determine the lawfullness of the notification with reference to the provisions of Section 4(1) of the Act. In an appeal, challenging the legality of the notification, it was clearly not open to the Tribunal when it passed the impugned order to issue directions permitting the Petitioners to develop the land. In the circumstances, we find merit in the grievance that has been urged in these proceedings.

5. The Petition is accordingly allowed and is made absolute in terms of prayer clause (b). In the circumstances of the case, there shall be no order as to costs.

(F.I.REBELLO, J.)

(DR.D.Y.CHANDRACHUD, J.)